



The record in this case consists of the transcript of the Preliminary Hearing held on August 16, 1994, and the exhibits attached thereto. The parties also stipulated that the evidentiary record should also contain a letter dated August 17, 1994, to Dr. Lucas from the attorney representing Utica Mutual Insurance, initialed by Dr. Lucas.

### **ISSUES**

The respondent and its insurance carrier, Thomas McGee & Sons, were ordered by Administrative Law Judge John D. Clark to provide medical treatment for the claimant through George Lucas, M.D., and payment of medical bills. From this Preliminary Hearing Order, the respondent and its insurance carrier, Thomas McGee & Sons, appeal to the Appeals Board seeking review concerning the sole issue as to whether claimant's right lunate triquetral ligament tear (ligament tear) and left wrist complaints were the result of work activities that arose out of and in the course of her employment with the respondent.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for preliminary hearing purposes, the Appeals Board finds as follows:

Whether the claimant suffered personal injury by accident arising out of and in the course of her employment is an issue considered jurisdictional and subject to review by the Appeals Board. See K.S.A. 44-534a(a)(2).

Involved in this preliminary hearing proceeding are three (3) separate insurance companies that have stipulated to the following workers compensation insurance coverage periods:

- (A) Utica Mutual Insurance Co., May of 1990 through July 31, 1992;
- (B) Truck Insurance Exchange, August 1, 1992, through July 31, 1993; and
- (C) Thomas McGee & Sons, August 1, 1993, through the present date.

The claimant has alleged in her Application for Hearing (E-1) dates of accidents of October 1991 through March 16, 1994, claiming repetitive arm and hand activities that caused "bilateral carpal tunnel and all physical bodily parts affected thereby." Claimant requests medical treatment to be furnished through George Lucas, M.D., and payment of medical bills.

Claimant commenced employment with the respondent in April of 1990 with her job duties being the operation of a folder gluer machine which required her to perform repetitive movements with both of her upper extremities. Claimant was familiar with this type of work as she had done similar work in binderies for some thirty (30) years. As early as September of 1990, the claimant developed problems with her right wrist. She notified respondent of these problems and sought medical treatment with her personal family physician, Donna E. Sweet, M.D. During this period of time, the symptomatology in the claimant's hands was also affected as a result of an unfortunate assault and rape that occurred on October 29, 1990. The assailant tightly tied the claimant's hands behind her

with her hose during the assault. Dr. Sweet provided conservative treatment and finally referred her to Dr. George Lucas, an orthopedic surgeon, in April of 1992. The claimant continued to perform her work activities for the respondent during this treatment.

Contained in Dr. Lucas' medical records, entered into evidence at the preliminary hearing, is a letter dated April 15, 1992, wherein Dr. Lucas identifies the claimant's right hand complaints as carpal tunnel syndrome and attributes the carpal tunnel syndrome to the claimant's work activities. Dr. Sweet's records are also introduced and in a letter dated June 19, 1992, she made a preliminary diagnosis of carpal tunnel syndrome on September 13, 1990. Dr. Sweet goes on to opine that the claimant's carpal tunnel syndrome has been exacerbated by her work activities.

On August 26, 1992, Dr. Lucas performed a carpal tunnel release of the claimant's right wrist. The claimant was taken off work until November 17, 1992. She was voluntarily paid medical benefits and temporary total disability benefits by the respondent through Utica Mutual Insurance Co. Dr. Lucas on March 22, 1993, released claimant from treatment and assigned a twelve percent (12%) impairment of function rating to her right hand and placed work restrictions of avoiding any vibrating tools and to avoid pressure in her hand as much as possible.

However, the claimant testified that her right wrist continued to have similar pain as she experienced prior to her surgery but the numbness did dissipate. Her symptomatology in her right wrist worsened in the latter part of 1993 and early 1994. Dr. Lucas, because of the claimant's continuing complaints, ordered an arthrogram in February of 1994, which revealed the ligament tear of the claimant's right wrist. Concerning this ligament tear, Dr. Lucas expressed the following opinions in the letter dated August 17, 1994, as follows:

- (1) The claimant's ligament tear was not present at the time of the right carpal tunnel release in August of 1992 and is probably not residual of her carpal tunnel problems;
- (2) The ligament tear injury occurred within twelve (12) months immediately preceding January of 1994.

In regard to her left hand complaints, Dr. Lucas was also requested to answer specific questions concerning prognosis, date of diagnosis, date of manifestation, and date of heightened aggravation, if any. Dr. Lucas referred to his medical records for these answers. A review of the medical records indicate that the claimant's left hand complaints did not result in any prescribed medical treatment and there are no statements indicating that there is a causal connection between claimant's left wrist complaints and her work activities.

For preliminary hearing purposes, the Appeals Board, having reviewed the Preliminary Hearing transcript, exhibits attached, and Dr. Lucas' answers in the letter dated August 17, 1994, finds and concludes that the claimant has failed to present evidence that it is more probably true than not that her left wrist complaints and ligament tear in her right wrist resulted from an accidental injury that arose out of and in the course of her employment with the respondent.

As to the question of the carpal tunnel syndrome condition of her right wrist, the Appeals Board finds that the medical evidence established that this medical condition had

met maximum medical improvement and the condition had been rated as to permanent functional impairment. Accordingly, any issues that were related to the right wrist carpal tunnel syndrome are not appropriate for the purpose of preliminary hearing. The medical treatment requested by the claimant herein was only requested in reference to the alleged injury to the claimant's left wrist and the ligament tear of the right wrist and not associated with carpal tunnel syndrome.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark, dated August 22, 1994, is reversed and the claimant is denied benefits against the respondent and its insurance carrier, Thomas McGee & Sons, for alleged injuries resulting in complaints of her left wrist and a ligament tear of her right wrist.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1995.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

- c: James B. Zongker, Wichita, KS  
Jonathan L. Laurans, Kansas City, MO  
Joel P. Hesse, Wichita, KS  
Gary A. Winfrey, Wichita, KS  
Kirby A. Vernon, Wichita, KS  
John D. Clark, Administrative Law Judge  
George Gomez, Director